

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 112 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO.
  2. To be referred to the Reporter or not? NO.
  3. Whether Their Lordships wish to see the fair copy of the judgement? NO.
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO.
  5. Whether it is to be circulated to the Civil Judge? NO.

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C.G. PATEL

Versus

MERABHAI SAMADBHAI

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Appearance:

MR RR MARSHALL for Petitioner  
MR VM TRIVEDI for Respondent No. 1  
MR SR DIVETIA, APP for Respondent No. 2

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CORAM : MR.JUSTICE M.H.KADRI  
Date of decision: 09/10/98

ORAL JUDGEMENT

1. The appellant- Food Inspector, Surat Municipal Corporation, who is the original complainant, has filed this appeal under Section 378 (4) of the Code of Criminal Procedure, challenging the legality and validity of the judgment and order, dated 5-2-85 of the learned Addl. Sessions Judge, Surat, in Criminal Appeal No.40/83, whereby the learned Addl. Sessions Judge, Surat, by allowing the appeal of the respondent No.1-original accused set aside the order of conviction and sentence imposed on the respondent-original accused by the learned Judicial Magistrate First Class (Municipal), Surat, in Prevention of Food Adulteration Case No.18/82, wherein the respondent came to be convicted for the offence under Section 7 read with Section 16 of the Prevention of Food Adulteration Act ( to be referred to as " the Act " ) and sentenced to undergo R.I. for one month and fine of Rs.500/-, in default, further S.I. for 10 days.

2. The appellant-Food Inspector on 5-2-82, at about 7-15 a.m. collected the sample of buffalo milk which was put in iron cane for sale. The said sample was collected by the appellant in the presence of one panch. As per the provisions of the Prevention of Food Adulteration Rules ( to be referred to as " the Rules " ), the said milk was sent for analysis to find out the contents of the sample of milk. The Public Analyst after analyzing the same sent his report that the sample of milk did not conform the standards prescribed under the Rules.

3. The appellant after obtaining the consent of the Competent Authority lodged complaint in the court of learned Judicial Magistrate First Class, Surat, which came to be registered as Prevention of Food Adulteration Complaint No.18/82. In support of the prosecution case, the appellant examined himself at Exh.12. After the evidence of the appellant was recorded, charge came to be filed vide Exh.34 against the respondent-original accused, wherein he pleaded not guilty and claimed to be tried. Thereafter, P.W. 2- Pravinchandra Sakarlal was examined at Exh.50. The prosecution in support of its case produced documentary evidence which consist of complaint, report of the Public Analyst, consent of the Competent Authority to lodge the complaint, panchnama, etc. After prosecution evidence was completed, the respondent-original accused came to be examined and his statement came to be recorded under the provisions of Section 313 of the Code of Criminal Procedure. The defence of the respondent is mainly of denial.

4. The respondent however, in his statement stated that he has not committed any offence, that he is poor

person and he has got 7 children and his wife is handicapped.

5. The learned Judicial Magistrate First Class (Municipal), Surat, after hearing the arguments of the learned advocates of the parties convicted the accused under Section 482 (2) of the Code of Criminal Procedure for the offence punishable under Section 7, read with Section 16 of the Act and sentenced the respondent-original accused to undergo R.I. for one month and fine of Rs.500/-, in default further S.I. for 10 days.

6. The respondent-original accused challenged the order of conviction and sentence recorded by the learned trial Magistrate by filing Criminal Appeal No.14/93, in the court of learned Addl. Sessions Judge, Surat. The learned Addl. Sessions Judge, Surat, after perusing the record of the case and after hearing the learned advocates of the parties, set aside the judgment and order of conviction and sentence passed by the learned Judicial Magistrate First Class (Municipal), Surat, and allowed the appeal by acquitting the respondent for the offence punishable under Section 7, read with Section 16 of the Act. The learned Addl. Sessions Judge, Surat, acquitted the respondent-accused mainly on the ground that there was breach of Rule 18 of the Rules, inasmuch as, the samples and forwarding letters were not sent by separate messenger in order to avoid any tempering and thus there was breach of mandatory requirement of Rule 18.

7. Learned counsel for the appellant and the learned Addl. Public Prosecutor Mr. S.R. Divetia have taken me through the entire evidence of the case and have submitted that the learned Addl. Sessions Judge, Surat, has erred in acquitting the accused for the offence alleged against him. It is submitted that the appellant had scrupulously followed the provisions of the Act and Rules in collecting the sample of milk and sending it for analysis, and therefore, the learned Magistrate had rightly convicted the respondent-accused for the offence under the Act. It is further submitted by the learned counsel for the appellant that there is sufficient evidence on record of the case to convict the respondent-accused, and therefore, the appeal should be allowed.

8. In my view, in this case, there is a clear breach of the mandatory provisions of Rule 18 of the Prevention of Food Adulteration Rules. Rule 18 reads as under :

18. Memorandum and impression of seal to be sent separately - A copy of the memorandum and specimen impression and the seal used to seal the packet shall be sent, in a sealed packed separately to the Public Analyst by any suitable means immediately but not later than succeeding working day.

9. From the evidence of the appellant it is revealed that the sample and the forwarding letters were not sent separately in order to avoid any tempering. Rule 18 has been interpreted by this High Court in a decision of Mohanlal Maganlal Sindhi & Ors. vs. State of Gujarat and Others ( 1977 (18) G.L.R., 1002 ). In the above decision, it is ruled that the provisions of Rule 18 is mandatory in nature and if the packet and impression of the seal sent together, it violates mandatory requirements of Rule 18. In my view, the principle laid down in Mohanlal Maganlal Sindhi & Others vs. State of Gujarat (Super) will apply with all fours to the facts of the present case.

10. The learned Addl. Sessions Judge had also followed the decision rendered in case of Mohanlal Maganlal Sindhi & Ors. vs. State of Gujarat (Supra) and had acquitted the accused on that ground alone. I do not find any infirmity or illegality in the judgment and order of the learned Addl. Sessions Judge while allowing the appeal and setting aside the conviction and sentence recorded by the learned Judicial Magistrate First Class ( Municipal ), Surat.

11. As a result of the foregoing discussion, the appeal is meritless and is hereby dismissed.

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